

II. REMARKS

A. Double Patenting Rejections

In the Office Action, the Examiner rejected claims 1, 41-51 and 63-68 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 5,591,452 and claim 1-33 of U.S. Patent No. 6,254,887.

With respect to the '887 patent claims, Applicants respectfully submit herewith a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) to overcome the double patenting rejection.

Applicants note that the obviation of an obvious-type double patenting rejection by the filing of a terminal disclaimer is not an admission, acquiescence, or estoppel on the merits of an issue of obviousness. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 873-74, 20 U.S.P.Q.2d 1392, 1394-95 (Fed. Cir. 1991).

With respect to the '452 patent claims, this rejection is respectfully traversed. The claims of the '452 patent recite, in pertinent part, a controlled release oral pharmaceutical preparation containing tramadol in a controlled release matrix. Applicants respectfully submit that the '452 patent claims fail to teach or suggest a dosage form having tramadol or a pharmaceutically acceptable salt thereof incorporated into a normal release matrix and overcoated with a controlled release coating, as recited in the present claims.

In view of the above, Applicants respectfully request that the double patenting rejection over the '452 patent be removed.

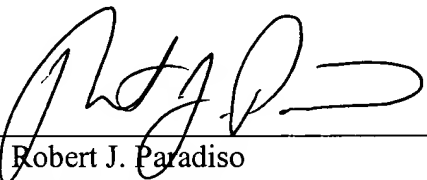
III. CONCLUSION

It is respectfully submitted that this case is now in condition for allowance. An early and favorable action on the merits is earnestly solicited.

According to currently recommended Patent Office policy the Examiner is requested to contact the undersigned in the event that a telephonic interview will advance the prosecution of this application.

Respectfully submitted,
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